

## REMARKS

### Claim Status

Claims 28-32, 34-37, 40-44, 47-48, 58-60, and 64-66 are pending in the present application. Claims 28 and 58 are amended herein to recite that the one or more compositions for enhancing removal of fecal waste from the body of the wearer is stored within the disposable article prior to the diaper being first used and prior to a first excretion of fecal waste by the wearer. (emphasis added). No additional claims fee is believed to be due.

### Rejection Under 35 U.S.C. § 103(a) Over Hashimoto

Claims 28-32, 58, and 64-66 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,681,297 issued to Hashimoto et al. (hereinafter "Hashimoto"). In order to establish a prima facie case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. (See MPEP § 2143). It is respectfully submitted that the Office Action does not establish a prima facie case of obviousness, because Hashimoto does not teach or suggest all the claim limitations recited in independent claims 28 and 58.

The Office Action asserts that the "article of Hashimoto is intended to be worn during subsequent excretions of fecal matter by the wearer" and that "the compositions provided to, and briefly stored in, the diaper in response to one excretion of fecal waste are present in the diaper prior to the next excretion of fecal waste by the wearer." (See Office Action, Page 2). As such, the Office Action's characterization of Hashimoto relies on the assertion that "compositions" are provided to and briefly stored in the diaper cup the diaper cup has been used and after at least one excretion of fecal waste by the wearer into the diaper cup. In contrast, claims 28 and 58 recite that the compositions are stored within the disposable article prior to the diaper being first used and prior to a first excretion of fecal waste by the wearer. (emphasis added). In further contrast to Hashimoto, claims 28 and 58 recite disposable articles, as opposed to an article intended to be worn during subsequent excretions of fecal matter by the wearer. (emphasis added).



With reference to Figure 2 above, Hashimoto states:

The main body 101 of the diaper cup 1 is connected to external facilities, as shown in FIG. 2, through a human waste sucking hose 104 that sucks the washing water and waste from the interior of the main body 101 of the diaper cup 1, a washing water sending hose 105 that passes washing water to the interior of the main body 101 of the diaper cup 1, a warm air sending hose 106 that sends warm air to the interior of the main body 101 of the diaper cup 1, and a sensor coupler 107 that derives the electric signals from the bowel movement perceiving sensor 109 and the urine perceiving sensor 114. The human waste sucking hose 104 is connected to a vacuum motor housing 2 via an excrement tank 3 and a vacuum hose 7. The washing water sending hose 105 is connected to a warm water tank 4 via an ejection adjustment valve 11b for the washing water and a water sending pump 5.

(See Col. 4, ll. 17-33). In contrast to the assertion made by the Office Action, Hashimoto does not disclose that washing water is stored in the diaper cup temporarily until it is drained.

Although Applicants disagree with the characterization of claims 28 and 58 in past Office Actions in light of Hashimoto, claims 28 and 58 are again amended herein to more explicitly recite that one or more compositions for enhancing the removal of fecal waste from the body of a wearer are stored within a disposable article prior to the diaper being first used and prior to a first excretion of fecal waste by the wearer. (emphasis added). Accordingly, Hashimoto does not teach or suggest all the claim limitations recited in claims 28 and 58.

Thus, it is respectfully submitted that, for at least the reasons discussed above, claims 28 and 58 are patentable under 35 U.S.C. § 103(a) over Hashimoto. Claims 29-32 and 64-66 depend from and include all the limitations of claim 28. As such, for at least the same reasons discussed above with reference to claim 28, claims 29-32 are also patentable under 35 U.S.C. § 103(a) over Hashimoto.

It is also respectfully submitted that dependent claims 64-66 recite additional limitations that are not taught or suggested by Hashimoto, and the Office Action fails to

point out where Hashimoto teaches or suggests these claim limitations. In particular, claim 64 recites “wherein the one or more compositions is joined to the diaper while the one or more compositions is being stored.” (emphasis added). Further, claim 66 recites “wherein the diaper further comprises a topsheet, and the one or more compositions is attached to the topsheet while the one or more compositions is being stored.” Based on the discussion of Hashimoto above, it is clear that Hashimoto does not teach or suggest the claim limitations recited in claims 64-66.

Claim 65 recites “the diaper further comprises a leg cuff, and the one or more compositions is attached to the leg cuff while the one or more compositions is being stored.” (emphasis added). With regard to claim 65, the Office Action asserts that Hashimoto discloses a composition that is “attached to (i.e. in contact with) the leg cuffs.” (See Office Action, Page 2). In making this assertion, the Office Action is equating the meanings of the words “attached to” with “in contact with” without providing a basis or explanation for doing so.

Therefore, it is believed that claims 28-32, 58, and 64-66 are in form for allowance and such indication is respectfully requested.

Rejection Under 35 U.S.C. § 103(a) Over Hashimoto in view of Jones

Claims 34-37, 40-44, 47, 48, 59, and 60 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Hashimoto in view of U.S. Patent No. 5,482,714 issued to Jones et al. (hereinafter “Jones”).

It is respectfully submitted that Jones does not correct the deficiencies of Hashimoto discussed above. As such, independent claims 28 and 58 are patentable under 35 U.S.C. § 103(a) over Hashimoto in view of Jones. Claims 34-37, 40-44, 47, and 48 depend from and include all the limitations of claim 28, and claims 59 and 60 depend from and include all the limitations of claim 58. Thus, for at least the same reasons discussed above with reference to claims 28 and 58, claims 34-37, 40-44, 47, 48, 59, and 60 are also patentable under 35 U.S.C. § 103(a) over Hashimoto in view of Jones.

Therefore, it is believed that claims 34-37, 40-44, 47, 48, 59, and 60 are in form for allowance and such indication is respectfully requested.


Appl. No. 09/342,719  
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Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 U.S.C. § 103(a). Early and favorable action in the case is respectfully requested.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By   
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Charles R. Matson  
Registration No. 52,006  
(513) 634-0072

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Customer No. 27752